

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Debt Collector  
Registration Application of Bobbie Radke

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman upon an appeal by Bobbie Radke from the Minnesota Department of Commerce's denial of his registration as a debt collector. An evidentiary hearing was held on October 15, 2010 and the hearing record closed on that day.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (the Department). Respondent Bobbie Radke, appeared on his own behalf and without counsel.

**STATEMENT OF THE ISSUES**

- (1) Whether Mr. Radke was convicted of a felony within 5 years of the date of his application for registration as a debt collector?
- (2) Whether Mr. Radke is ineligible for registration under Minn. Stat. § 332.35 (2008)?

Because the Administrative Law Judge concludes that Mr. Radke's criminal convictions of July 20, 2007 render him ineligible for registration, he recommends that the Commissioner affirm the denial of Application No. 170490.

Based upon the record in this matter, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On June 17, 2010, Mr. Radke submitted an application for registration as a debt collector.<sup>1</sup>

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<sup>1</sup> Exhibit 1.

2. Question No. 1 on the application asks whether the applicant has ever been convicted of or charged with a crime.<sup>2</sup>

3. Mr. Radke confirmed that in 2007, he was convicted of felony possession of child pornography.<sup>3</sup>

4. The Department investigated Mr. Radke's conviction and discovered that, on July 20, 2007, he was charged with, pleaded to, and convicted of 25 counts of Possession of Child Pornography in violation of Minn. Stat. § 617.247, subd. 4 (a).<sup>4</sup>

5. On July 8, 2010, the Department notified Mr. Radke that he was ineligible for registration as a debt collector, among other reasons, because he had been convicted of 25 felonies within the past 5 years.<sup>5</sup>

6. On August 2, 2010, Mr. Radke requested an administrative hearing to appeal the Department's determination.<sup>6</sup>

7. Following the submission of his appeal, the Department asserted other, additional bases for denying the registration application.<sup>7</sup>

8. Mr. Radke has satisfied the requirements of his supervised release.<sup>8</sup>

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 332.41.

2. Mr. Radke received notice of the charges against her and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Violation of Minn. Stat. § 617.247, subd. 4(a) is a felony. The statute provides:

A person who possesses a pornographic work or a computer disk or computer or other electronic, magnetic, or optical storage system or a

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Exs. 2, 3, 4 and 5; Testimony of Cheryl Costello.

<sup>5</sup> Ex. 5.

<sup>6</sup> Ex. 6.

<sup>7</sup> See, Notice and Order for Hearing, Count II; Test. of C. Costello.

<sup>8</sup> Ex. 1 and Testimony of Bobbie Radke.

storage system of any other type, containing a pornographic work, knowing or with reason to know its content and character, is guilty of a felony and may be sentenced to imprisonment for not more than five years and a fine of not more than \$5,000 for a first offense and for not more than ten years and a fine of not more than \$10,000 for a second or subsequent offense.<sup>9</sup>

4. Minn. Stat. § 332.35 prohibits the issuance of a Minnesota debt collector registration to a person convicted of “any felony” within the past 5 years. The statute provides:

No registration shall be accepted for, and no license shall be issued to, any person, firm, corporation or association who or which, or any of the officers of which have, within the past five years, been convicted in any court of fraud or any felony or have been convicted of or had judgment entered against them in any court for failure to account to a client or customer for money or property collected by them for the client or customer. No registration shall be accepted for, and no license shall be issued to, any attorney whose license to practice law has been suspended or revoked, for a period of five years after the date of such suspension or revocation.<sup>10</sup>

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Commissioner AFFIRM the denial of Application No. 170490.

Dated: November 15, 2010

/s/ Eric L. Lipman

ERIC L. LIPMAN

Administrative Law Judge

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<sup>9</sup> Minn. Stat. § 617.247, subd. 4(a) (2008) (emphasis added).

<sup>10</sup> Minn. Stat. § 332.35 (2008) (emphasis added).

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

At the evidentiary hearing, Mr. Radke argued that because of his successful re-entry into the community from state prison, and because of his genuine remorse over the misconduct that led to his convictions, he should be permitted to receive licensure as a debt collector.

While his successes on supervised release and following the expiration of his sentence are commendable, Minn. Stat. § 332.35 does not permit consideration of these factors. The statute imposes a bar to registration for a minimum of five years following a felony conviction. Accordingly, the Department's denial should be affirmed.

Further, because the provisions of the statute are dispositive, the Administrative Law Judge did not reach the alternative bases offered by the Department for its denial of Mr. Radke's registration application.

**E. L. L.**